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April 10, 2020

BY E.C.F.

Honorable Ona T. Wang
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Memo Endorsed

Re: **Francisco Barnett v. City of New York, et al.**
17-CV-2637 (GBD) (OTW)

Your Honor:

I am an Assistant Corporation Counsel in the Office of James E. Johnson, Corporation Counsel of the City of New York, and the attorney assigned to the defense of the above-referenced matter on behalf of defendant City of New York ("City").

On April 7, 2020, this Court granted defendant City's substitution of counsel and directed the City to mail a copy of that Order to the *pro se* plaintiff. (Docket No. 29) Subsequently on April 7, 2020, the Honorable District Judge George B. Daniels dismissed this action for failure to prosecute (Docket No. 30), thus rendering the Order at Docket No. 29 moot. But the City respectfully requests, in an abundance of caution, that the Court vacate that portion of its Order at Docket No. 29 directing the City to serve plaintiff with a copy of that Order by mail, and deem service waived by plaintiff's failure to prosecute and provide a current address for service.

As explained in defendant's letter requesting dismissal for failure to prosecute (Docket No. 26), plaintiff was released from Riker's Island on or about November 2, 2017, and never updated his address on the docket. Nor has he provided any other contact information to the Court or defense counsel. Therefore, any attempt to send mail to plaintiff at his Riker's Island address would be futile. Mailing would also result in fruitless work for Department of Correction personnel during the COVID-19 public health crisis. That emergency places a heavy burden the City's correctional system to protect the health of its staff and prisoners.

Accordingly, the City respectfully requests that the Court vacate that portion of its Order at Docket No. 29 directing the City to serve plaintiff by mail and deem service waived.

We thank the Court for its consideration of this matter.

Respectfully submitted,

Evan J. Gottstein /s/

Evan J. Gottstein
Assistant Corporation Counsel
Special Federal Litigation Division

Application Granted.

SO ORDERED.



Ona T. Wang
U.S. Magistrate Judge

4/22/2020